

CLAYTON W. WILLIAMS, JR.

EXXON CORP.

IBLA 86-635

Decided July 25, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling issuance of oil and gas lease W-88886 and reinstating and suspending oil and gas lease offer W-88886.

Reversed.

1. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to--Withdrawals and Reservations: Generally

The Secretary of the Interior has authority to cancel an oil and gas lease issued for lands not subject to leasing at the time of lease issuance. However, where BLM cancels a lease on the basis that oil and gas leasing had been suspended for the lands described in the lease in a previous agreement between BLM and the Forest Service, and it is subsequently shown that the suspension agreement was an improper withdrawal of Federal lands because the agencies failed to follow statutory withdrawal procedures in 43 U.S.C. § 1714 (1982), and the lands described in the lease are otherwise subject to leasing, it is improper to cancel the lease on the grounds the lands were not subject to leasing.

2. Oil and Gas Leases: Bona Fide Purchaser

Where, at the time of lease issuance, BLM's records pertaining to the lease revealed no indication that

the lease had been issued in violation of the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. | 4332 (1982), but rather indicated that sufficient and proper analysis of potential environmental impacts had been completed prior to lease issuance, reliance by an assignee of the lease on the BLM decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status.

APPEARANCES: C. M. Peterson, Esq., Dwight I. Bliss, Esq., and Laura L. Lindley, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Clayton W. Williams, Jr. and Exxon Corporation have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 24, 1986, cancelling oil and gas lease W-88886, which had been issued to Williams, effective December 1, 1985. This decision also reinstated and suspended Williams' over-the-counter noncompetitive oil and gas lease offer W-88886.

On June 7, 1984, Williams filed an over-the-counter lease offer pursuant to section 17(c) of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. | 226(c) (1982). The offer described lands within certain sections of T. 45 N., R. 113 W., sixth principal meridian, in Teton County, Wyoming, and within the boundaries of the Bridger-Teton National Forest.

In a decision dated July 19, 1984, BLM rejected the lease offer, advising Williams that the described lands had been withheld from oil and gas leasing pursuant to a memorandum from Secretary Krug to the Directors of BLM and Geological Survey (Krug Memorandum), dated August 15, 1947, and published

in the Federal Register (12 FR 5859) that same date. See James Donoghue, 24 IBLA 210 (1976).

Upon receipt of the decision rejecting Williams' lease offer, counsel for Williams wrote to BLM, explaining that, in his memorandum, Secretary Krug had provided an exception for those lands within T. 45 N., R. 113 W., which were outside the Jackson Hole National Monument (now Teton National Park) and the Teton Wilderness Area, providing that such lands could be leased if they were "deemed necessary to establish or complete a logical unit area." 12 FR at 5860. ^{1/} Counsel then noted that certain lands described in Williams' lease offer fell within this exception, and further explained that Exxon Corporation was in the process of forming the Leidy Creek Unit Agreement which included lands in the lease offer. On August 17, 1984, after receiving this additional information, BLM reinstated Williams' oil and gas lease offer with its original priority date.

A review of various events occurring and actions taken between the time of the initial reinstatement of the lease offer and the issuance of the lease and its subsequent cancellation by BLM is important to an understanding of the issues raised in this appeal. Shortly before BLM's August 17, 1984, reinstatement of the lease offer, Exxon's Leidy Creek Unit Agreement, Unit No. 14-08-0001-21145, dated June 16, 1984, was

^{1/} Specifically, this memorandum provided:

"The lands north of the [11th standard parallel] shall continue to be temporarily withheld from leasing under the oil and gas provisions of the Mineral Leasing Act, unless the lands in T. 45 N., R. 113 W. 6th P.M., Wyoming outside the Jackson Hole National Monument and outside the Teton Wilderness Area are deemed necessary to establish or complete a logical unit area."

approved by BLM upon recommendation of the Forest Service. The approval of the unit agreement included the notation that the unleased tracts, including the lands within the unit described in Williams' lease offer, were uncommitted but considered to be controlled acreage because, prior to issuance of leases for these tracts, the lessees would be required to commit to the unit agreement. An application for a permit to drill (APD) for the initial unit well was approved by BLM on September 7, 1984; the well was spudded on October 30, 1984, and plugged as a dry hole on January 18, 1985. 2/

BLM began processing Williams' lease offer soon after its reinstatement. On August 17, 1984, BLM forwarded a copy of the lease offer to the Forest Service for review and recommendations. By letter dated October 31, 1984, the Regional Forester advised the BLM Wyoming State Director that the Forest Service had "no objection to the issuance of oil and gas lease W-88886 for lands within the Bridger-Teton National Forest" provided the lease included certain standard and site-specific stipulations described in the letter. The Forest Service also stated that its recommendations were "based on environmental analysis reports for the Bridger-Teton National 2/ In their statement of reasons (SOR) for appeal, appellants state that data from the test well demonstrated a need for additional geophysical work prior to determination of the location of the second unit test well. Accordingly, further seismic work was performed during August and September 1985. In March 1986, Exxon filed a Notice of Intent to stake the second unit well, a 12,000-foot test in the NE[^] of sec. 2, T. 44 N., R. 113 W., sixth principal meridian, with the test to commence on Sept. 1, 1986 and to be completed in February 1987. However, because the preferred drillsite was a south offset to lands within lease offer W-88886, Exxon requested on Apr. 2, 1986, a further suspension of the unit obligation and lease term, until a final decision in the present appeal. No further information on this request is available in the record on appeal.

Forest," and that it did not believe an environmental impact statement was needed at that time. On January 7, 1985, BLM forwarded the stipulations recommended by the Forest Service to Williams, requiring their execution. The stipulations were signed by Williams on January 14, 1985, and returned to BLM.

On the same date that BLM forwarded the stipulations to Williams, it also sent him a notice requiring him to furnish either evidence of commitment of the lease to the Leidy Creek Unit Agreement or a letter from the unit operator stating that he had no objections to lease issuance without unit joinder. On January 17, 1985, Williams executed the Ratification and Joinder to the Leidy Creek Unit Agreement and forwarded the forms to Exxon, the unit operator. By letters dated February 12 and March 8, 1985, Exxon forwarded to BLM the necessary copies of the ratification and joinder, together with signed consent of the working interest owners. Upon receipt of these documents, BLM advised Exxon in a letter dated March 11, 1985, that "Lease W-88886, Unit Tract 15, is to be considered fully committed to the unit, effective as of the date of lease issuance, provided that the lease is issued to Clayton W. Williams, Jr. who has executed a joinder to the unit agreement and unit operating agreement." A copy of this letter was sent to the Forest Service.

BLM took no further action with respect to the lease offer until November 12, 1985, at which time the Rock Springs District Office, in a memorandum to the Wyoming State Office, stated that the lands included in the lease offer did not lie within any known geologic structure of a

producing oil or gas field (KGS). Accordingly, the lands were clearlisted for lease issuance. 3/ On November 18, 1985, the Chief, Oil and Gas Section, of the BLM Wyoming State Office executed oil and gas lease W-88886 to Williams effective December 1, 1985. A copy of the executed lease was forwarded to the Forest Service. The lease as issued covered the following described lands within the Leidy Creek Unit Area:

T. 45 N., R. 113 W., 6th principal meridian
 Sec. 26: Lots 1, 2, 3, 4, 5, E 1/2 NE 1/4
 27: Lots 1, 2, 3, 4, 5
 28: Lot 1
 33: S 1/2 SE 1/4
 34: S 1/2 S 1/2
 35: E 1/2 E 1/2 SW 1/4 NE 1/4, SE 1/4 NE 1/4,
 E 1/2 NW 1/4 SW 1/4, SW 1/4 NW 1/4 SW 1/4,
 SW 1/4 SW 1/4, E 1/2 SW 1/4, SE 1/4
 36: S 1/2 N 1/2, S 1/2

By letter dated December 4, 1985, the Regional Forester complained to BLM concerning issuance of the lease. The letter contained copies of

3/ Appellants document that a delay in issuing the lease was occasioned by the contention of the Rock Springs District Office that

"leasing within the unit should be delayed until it is determined whether or not the unit is productive. If the unit is productive, and the unleased lands are determined to be part of a KGS [known geologic structure], the minerals should then be leased competitively. In the event drilling for oil and gas fails and the unit is non-productive, then we believe that the intent of the Krug memorandum is not to lease the minerals."

(Memorandum to the State Director from the District Manager dated Sept. 16, 1985). The State Office disagreed, stating:

"[P]arcel W-88886 can no longer be 'held' pending Exxon's possible future activities in the area. As your memo indicates, since the lands underlying the referenced parcel are necessary to complete the logical unit area, the Krug memorandum allows leasing of the unleased Federal minerals in T. 45 N., R. 113 W." (Memorandum to the District Manager from the State Director dated Oct. 8, 1985 (emphasis in original).)

previous correspondence between BLM and the Forest Service. These letters essentially set forth an agreement between the two agencies that noncompetitive oil and gas leasing within the Bridger-Teton National Forest would be suspended by BLM. In the first of these, dated May 29, 1985, the Regional Forester requested, based on "the environmental sensitivity of the Bridger-Teton National Forest, the intense public concern regarding its management, and the anticipated completion of further environmental assessments and/or Forest Plan in the near future" that "further processing of oil and gas leases involving the Bridger-Teton National Forest should be delayed until these are completed and we submit new reports."

By letter dated June 10, 1985, the State Director informed the Regional Forester that, pursuant to his request, BLM was returning various letters of recommendation which it had received in January and March 1985. This letter also stated "We will suspend oil and gas lease issuance within the Bridger-Teton National Forest until further advised by you." In a subsequent letter, dated July 25, 1985, the Regional Forester advised the Wyoming State Director that, where drainage of Federal lands was occurring, ~~the Forest~~ Service would, under certain conditions, provide recommendations with respect to competitive leasing.

Despite this exchange of letters, however, Williams' noncompetitive lease offer "was inadvertently overlooked" and a lease ultimately issued on November 18, 1985, with an effective date of December 1, 1985.

When the Regional Forester discovered that BLM had issued the lease to Williams, he requested that it be cancelled as issued in error:

We realize that the lease was issued through an oversight based on an out-of-date Forest Service report. [4/] We, therefore, request that the lease be cancelled as being issued in error and the application be held in suspension. We are basing this request on the following reasons:

1. NEPA [National Environmental Policy Act] documentation had not been completed prior to lease issuance; therefore, full compliance with the National Environmental Policy Act of 1969 has not been achieved.
2. The issuance of the lease is inconsistent with your decision as authorized officer to suspend leasing within the Bridger-Teton National Forest.

(Letter dated Dec. 4, 1985, from the Regional Forester to the Wyoming State Director).

On December 31, 1985, BLM advised the Forest Service that it was prepared to initiate action to cancel the lease and requested documentation to support the requested cancellation. The Forest Service provided the following documentation on February 10, 1986:

We requested that you initiate cancellation of W-88886 primarily because NEPA requirements were not fully complied with prior to lease issuance.

Personnel on the Bridger-Teton National Forest are currently working on the Forest-wide Environmental Impact Statement (EIS) and Land and Resource Management Plan. The draft EIS and Plan

4/ This reference is to the report dated Oct. 31, 1984, in which the Forest Service had originally notified BLM that it agreed to lease issuance subject to the imposition of a number of stringent stipulations. See note 7, infra.

should be available for public review from April through July 1986. The final documents are not anticipated until mid-1987.

A preliminary environmental review conducted as a part of the planning/EIS process indicates that the lands included in W-88886 are within an area of high environmental sensitivity and there is potential for significant environmental impacts.

The lease area is within a grizzly bear habitat area. The grizzly is classified as a threatened species under the Endangered Species Act. Goals for the area are to maintain or improve essential habitat for recovered (viable) populations of grizzly bear and to minimize the potential for and resolve bear/human conflicts. Mineral leasing exploration and development may not be allowed if upon final analysis the grizzly bear may be adversely affected. The management area also contains high visual quality values. This visual sensitivity is due to the lease area being adjacent to the Grand Teton National Park and in close proximity to the Teton Wilderness area. It is also located within the greater Yellowstone Ecosystem, an area of significant environmental concern and controversy.

Upon receipt of this information, BLM issued its February 24, 1986, decision cancelling the lease and reinstating and suspending the lease offer. In reaching its decision, BLM found:

It is apparent from documents received from the Regional Forester that there are significant environmental values in the area: that preliminary environmental and planning assessments have identified the need for more comprehensive analyses in order to comply with requirements of NEPA and the Endangered Species Act; that these efforts are ongoing; and that issuance of the lease was premature, illegal, and contrary to the express request of the Regional Forester. Further analyses will identify the degree and manner of mitigation necessary in order to meet statutory obligations.

Inasmuch as Lease W-88886 was issued prematurely, in error, and contrary to law, it is hereby cancelled. 43 CFR 3108.3(b). Lease offer W-88886 is reinstated and is hereby placed in a pending status until the Regional Forester sends us a final recommendation regarding stipulations or issuance, based on full compliance with NEPA and the Endangered Species Act. 43 CFR 3101.74(c). [Emphasis in original.]

Appellants then timely filed an appeal from the decision cancelling the lease.

In addition to the above review of the facts relating to the issuance and cancellation of lease W-88886, a review of the circumstances surrounding the assignment of the lease from Williams to Exxon is also important to an understanding of the legal issues raised by this action. Appellants state that by Letter Agreement dated February 25, 1985, Williams agreed to sell and Exxon agreed to purchase certain oil and gas leases, including Federal oil and gas lease application W-88886. The agreement provided for an initial payment upon execution of the Letter Agreement and payment of the balance of the purchase price "'at such time as the resultant lease is assigned to Exxon'" (SOR at 14). According to appellants, on December 3, 1985, Williams executed and delivered to Exxon an assignment of the issued oil and gas lease W-88886 and received payment for the balance of the consideration due upon lease issuance and delivery of the assignment. Id. This assignment was filed with the Wyoming State Office on December 16, 1985.

Appellants assert on appeal that there is no legal support for BLM's decision to cancel the lease. They argue that the reasons for cancelling the lease submitted by the Forest Service and accepted by BLM do not establish that the lease was improperly issued or subject to cancellation. They further assert that Exxon was a bona fide purchaser of the lease and, as such, should be afforded the appropriate statutory protection as provided in 30 U.S.C. | 184(h)(2) and (i) (1982).

Initially, we note that it is beyond dispute that the authorized officer, pursuant to the delegated authority of the Secretary of the Interior, has broad discretion in determining whether to issue an oil and gas lease pursuant to the MLA. Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981). However, once this authority has been exercised and a lease has been formally issued, it can then be cancelled only under certain circumstances. See David Burr, 56 IBLA 225 (1981). Cf. Exxon Corp., 97 IBLA 330 (1987) (once the authorized officer has communicated acceptance of a high bid he is thereafter estopped from rejecting the bid for a perceived inadequacy in the amount tendered).

It is, of course, axiomatic that the Secretary has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); D. M. Yates, 74 IBLA 159 (1983); Fortune Oil Co., 69 IBLA 13 (1982). In Boesche v. Udall, *supra*, the Supreme Court noted that section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. | 188(a) and (b) (1982), which provides procedures for cancellation and forfeiture of leases for failure to comply with the conditions thereof, "reaches only cancellations based on post-lease events and leaves unaffected the Secretary's traditional authority to cancel on the basis of pre-lease factors." Id. at 478-79 (emphasis in original).

[1] Thus, it is well established that the Department has authority to cancel a lease where the lands described in the lease were not subject to leasing at the time of lease issuance. See, e.g., Richard H. Clark, 92 IBLA 353 (1986). Where Federally owned lands that have been legislatively or

administratively withdrawn from leasing under the MLA are inadvertently included within a lease, the Department must cancel the lease to the extent that it embraces such lands, since, as to those lands, the lease is a legal nullity. See Hanes M. Dawson, 101 IBLA 315 (1988). Similarly, where a lease has issued to someone other than the first-qualified applicant, or has been issued in violation of established procedures, it is properly subject to cancellation. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); United States v. Alexander, 41 IBLA 1 (1979), aff'd sub nom. Alexander v. Andrus, No. 79-603-B (D.N.M. July 7, 1980). In this second instance, however, the lease is considered voidable rather than void. See Raymond G. Albrecht, 92 IBLA 235, 242, 93 I.D. 258, 262 (1986). As we shall discuss, infra, this distinction is of critical importance with respect to the applicability of the bona fide purchaser protection afforded by 30 U.S.C. | 184(h)(2) (1982).

In the present case, one of the reasons cited by the Forest Service in its December 4 letter as grounds for cancelling the lease was that it had been issued "contrary to our agreement to suspend oil and gas leasing within the Forest until the Forest plan and/or further environmental assessments were completed." In its decision cancelling the lease, BLM noted that "issuance of the lease was premature, illegal, and contrary to the express request of the Regional Forester" (Decision at 3). It is unclear whether or not BLM was holding that the mere fact that the Regional Forester objected to lease issuance deprived the State Office of the authority to issue it. If so, BLM is simply wrong.

Under the law prevailing when the lease issued, it is clear that BLM, not the Forest Service, had the ultimate responsibility in determining whether or not an oil or gas lease for public domain land should issue. ^{5/} See, e.g., Natural Gas Corp. of California, 59 IBLA 348 (1981); Earl R. Wilson, 21 IBLA 392 (1975). Thus, the mere fact that the Regional Forester objected to issuance of the lease could not make issuance improper. Indeed, this Board had repeatedly held in similar circumstances that even where the surface management agency objected to issuance of a public domain lease, it was the responsibility of BLM to independently determine whether or not leasing was in the public interest. See, e.g., Western Interstate Energy, Inc., 71 IBLA 19 (1983); Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981).

It is also possible, however, that BLM was arguing that the effect of the agreement between the Regional Forester and the Wyoming State Director suspending oil and gas leasing in the Bridger-Teton National Forest was to prevent any authorized leasing of the lands in question and could thus serve as a basis for cancelling the lease as having been issued in error. Appellants, in response to such a contention, argue at length that there

was nothing precluding the authorized leasing of these lands, and specifically contend that the interagency agreement suspending leasing in the area was an improper withdrawal unauthorized by law and therefore invalid. Thus, _____

^{5/} We recognize, of course, that section 5102 of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, 101 Stat. 1330-256, codified at 30 U.S.C. § 226(h) (1982), amended section 17 of the MLA by adding, inter alia, the following subsection: "(h) The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture." 101 Stat. 1330-258. But, at the time that the lease issued in the instant case, no such general authority was vested in the Secretary of Agriculture.

appellants assert, the lease cannot be cancelled on the grounds the lands were not available for oil and gas leasing at the time that the lease issued.

It is uncontroverted that the Secretary has general authority to refuse to issue oil and gas leases under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. | 226 (1982). See James M. Chudnow, 68 IBLA 128 (1982); David A. Province, 49 IBLA 134 (1980). The Secretary has traditionally exercised this authority both on an ad hoc basis, in response to specific lease offers, or more formally through his general authority to withdraw land from mineral leasing. See 43 U.S.C. | 141 (1970) (repealed by section 704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2792); United States v. Midwest Oil Co., 236 U.S. 459 (1915). Appellants argue that, since the passage of FLPMA, the Secretary's authority to withdraw lands from leasing is governed by section 204 of that Act, 43 U.S.C. | 1714 (1982), which provides that withdrawal authority can be delegated only to "individuals in the Office of the Secretary who have been appointed by the President," 43 U.S.C. | 1714(a) (1982), and outlines the steps to be taken by authorized individuals in effectuating withdrawals, including the requirement that the Department must notify both Houses of Congress where the withdrawal is larger than 5,000 acres. 43 U.S.C. | 1714(c) (1982). They contend that the indefinite suspension of oil and gas leasing by BLM in the Bridger-Teton National Forest constituted a "defacto withdrawal made by an unauthorized officer" (SOR at 31). In support of their argument, appellants cite two Federal District Court cases directly on point.

In the first case, Mountain States Legal Foundation v. Andrus, 499 F. Supp. 383 (D. Wyo. 1980), the Forest Service and BLM, as in the present case, had agreed to a suspension of oil and gas leasing on certain Forest Service lands. In considering the allegation that the "Secretary of the Interior's failure to act on the oil and gas lease applications" was an unauthorized withdrawal under FLPMA, the court first referenced the statutory definition of "withdrawal" found in FLPMA, which states in pertinent part:

The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purposes of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; * * *.

43 U.S.C. | 1702(j) (1982); see 499 F. Supp. at 391. The court then found that

the combined actions of the Department of the Interior and the Department of Agriculture fit squarely within the foregoing definition of a withdrawal found in 43 U.S.C. | 1702(j). The combined actions of the Secretaries have (1) effectively removed large areas of federal land from oil and gas leasing and the operation of the Mineral Leasing Act of 1920, (2) in order to maintain other public values in the area * * *.

Id. Thus, the court reasoned, since the agencies' moratorium on leasing "fit squarely" within the definition of withdrawal as found in FLPMA, it could only be implemented by proper compliance with the procedural requirements found in 43 U.S.C. | 1714 (1982). Since that had not occurred, the

Court ordered the Secretary to comply with the requirements or "cease withholding said lands from oil and gas leasing."

Appellants also cite the decision in Mountain States Legal Foundation v. Hodel, 668 F. Supp. 1466 (D. Wyo. 1987), a case of particular relevance to the present appeal. In that case, the Mountain States Legal Foundation (Foundation) filed suit against the Secretaries of the Department of the Interior and the Department of Agriculture challenging BLM's suspension of mineral leasing in the Bridger-Teton National Forest. The Foundation alleged that the suspension was improper, essentially for the same reasons cited by appellants herein, and requested that the Court permanently enjoin the defendants from pursuing the alleged unlawful policies and procedures with respect to processing mineral lease applications.

Consistent with the analysis in Mountain States Legal Foundation v. Andrus, supra, the court found that "the acts of suspension of mineral leasing and the unreasonable delay in mineral leasing in the * * * Bridger-Teton National [Forest] fall squarely within the definition of withdrawal for purposes of [FLPMA]." 668 F. Supp. at 1474. Thus, the Court noted:

"The action of the Secretaries is more than mere delay in the leasing process; rather, it involves affirmative action to withhold these forest lands from mineral leasing, thereby limiting leasing activities in order to maintain basic environmental values for an indefinite period of time." Id.

In response to arguments by the United States that mineral leasing does not come within the purview of the FLPMA withdrawal provisions, the court

turned to the case of Pacific Legal Foundation v. Watt, 529 F. Supp. 982 (D. Mont. 1981):

In contrast to arguments asserted by the defendants here, the Montana District Court in the case of Pacific Legal Foundation v. Watt, 529 F. Supp at 995-997, concluded that mineral leasing is included in the definition of a withdrawal based on several factors. First, the term "mineral leasing" appears in several subsections of 43 U.S.C. | 1714. Second, the legislative history's reference to retaining the "traditional meaning" of a withdrawal does not support the conclusion that Congress intended to exclude mineral leasing from the procedural provisions regarding withdrawals of federal land. Third, the district court distinguished the case of Udall v. Tallman, 280 U.S. 1, 85 S. Ct. 792, 13 L.Ed.2d 616 (1965) as applying the use of "withdrawal" only to the specific public land order in question. Fourth, the district court noted that other Secretaries have withdrawn land from mineral leasing under the authority in 43 U.S.C | 1714 of [FLPMA]. For all of these reasons, the district court held that the definition of a withdrawal includes mineral activities under the Mineral Leasing Act.

668 F. Supp. at 1474. The court then found that the "actions taken by the Secretaries in delaying and suspending mineral leasing in the [Bridger-Teton National Forest] is an impermissible withdrawal of land by failure to comply with the requirements of 43 U.S.C. | 1714, and that such action is unlawful as an abuse of discretion and not in accordance with the law." Id. at 1475.

In light of the above holdings, particularly that of the District Court in Mountain States Legal Foundation v. Hodel, supra, it is clear that the agreement between the Regional Forester and the Wyoming State Director, BLM, cannot properly serve as a basis for the conclusion that issuance of lease W-88886 was contrary to law and thus the lease was a nullity from its inception. Moreover, since, under the court's analysis, the interagency agreement suspending oil and gas leasing in the Bridger-Teton National

Forest could not effectuate a withdrawal of the lands in question from leasing, neither could it serve as a basis for cancelling the lease.

[2] Having reached the above conclusion, we must next examine the alternate basis cited by BLM for cancelling the lease; namely, that the requirements of NEPA had not been fully met prior to lease issuance. The Forest Service, in its February 10, 1986, letter documenting its belief that the lease should be cancelled, cited this as the primary reason for cancellation. Agreeing with the Forest Service, BLM in its decision stated:

It is apparent from documents received from the Regional Forester that * * * preliminary environmental and planning assessments have identified the need for more comprehensive analyses in order to comply with requirements of NEPA and the Endangered Species Act; that these efforts are ongoing; and that issuance of the lease was premature, illegal, and contrary to the express request of the Regional Forester.
* * *

Inasmuch as Lease W-88886 was issued prematurely, in error, and contrary to law, it is hereby cancelled.

In essence, BLM is contending that issuance of the lease prior to the preparation of further environmental studies 6/ violated the applicable provisions of NEPA. See 42 U.S.C. | 4332 (1982). It is impossible for this Board to determine from the record presently before us whether or not the Forest Service and BLM are correct in their assertion that prior Forest

6/ While the Forest Service justification mentioned preparation of a Forest-wide EIS, it is unclear whether or not the Forest Service felt that preparation of this document was absolutely necessary prior to lease issuance. Thus, its letter of July 25, 1985, informing the Wyoming State Director that it would provide recommendations with respect to competitive leasing of Federal lands where drainage was occurring is inconsistent with the argument that any leasing was impossible until such time as an EIS was prepared.

Service environmental studies were inadequate. Inasmuch as the decision below involved cancellation of an issued lease, we would have expected that BLM and the Forest Service would have, at a minimum, attempted to document exactly what the deficiencies were in the original Forest Service analyses, since cancellation of this lease was, to a large extent, premised on the existence of such deficiencies. Rather than providing such documentation, however, both the Forest Service and BLM have submitted essentially conclusory statements that further studies were needed, generally referencing the "high environmental sensitivity" of the area. ^{7/} Such generalized statements do not provide sufficient support for cancellation of the lease in the instant case.

In any event, however, it is important to note that NEPA is essentially a procedural rather than action-forcing statute. See Strycker's Bay Neighborhood Council v. Karlin, 444 U.S. 223 (1980); Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558 (1978); Park City Resource Council, Inc. v. U.S. Department of Agriculture, 817 F.2d 609, 616 (10th Cir. 1987). In other words, nothing in NEPA, in and of itself, requires the selection of one course of action. What NEPA does require, however, is that "the Government officials determining whether those actions should go forward

^{7/} That the lease involved land in an environmentally sensitive area was certainly known to the Forest Service when it initially recommended lease issuance on October 31, 1984. Indeed, a review of the many restrictive stipulations which were placed on the lease at the request of the Forest Service discloses that the Forest Service was duly attentive to a vast array of possible environmental problems. Thus, one stipulation expressly advised the lessee that the presence of any threatened or endangered species "may result in some restrictions to the operator's plans or even disallowing any use or occupancy that would detrimentally affect any of the identified species." Surface Disturbance Stipulations at 6 (emphasis supplied).

have a full and complete grasp of the possible consequences of the activity in order that they may take steps to ameliorate adverse impacts to the extent possible, and, if certain impacts cannot be avoided, decide the advisability of proceeding and thereby accepting such impacts." State of Wyoming Game & Fish Commission, 91 IBLA 364, 367 (1986).

The importance of the foregoing is that, since NEPA is primarily procedural, even if a lease were issued in violation thereof, such a lease would be merely voidable rather than void. And this distinction becomes of critical relevance with respect to Exxon which asserts that it is entitled to the bona fide purchaser protection afforded by 30 U.S.C. | 184(h) (1982).

Thus, 30 U.S.C. | 184(h)(2) (1982) provides, in pertinent part:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease or interest therein * * * which * * * lease [or] interest * * * was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, [or] interest * * * was acquired * * * may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

The regulation implementing this statutory mandate, 43 CFR 3108.4, further provides:

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice

as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease.

There are two discrete questions which must be answered in order to determine whether a party qualifies for bona fide purchaser protection. First, was the land embraced in the lease properly subject to leasing in conformity with the statute under which the offer was made? Second, if the answer to this first question is in the affirmative, is the assignee a bona fide purchaser for value?

The first question is relevant since, as the Board has long held, bona fide purchaser protection applies only where the land was, in fact, available for leasing at that time that the lease issued. Thus, where the United States has reserved no mineral interest in patented lands, a lease issued therefor is a nullity and, regardless whether an innocent third-party has purchased the lease, 30 U.S.C. § 184(h)(2) (1982) can afford the individual no protection against cancellation of such an erroneously issued lease. A similar result has obtained where a noncompetitive lease was issued for lands subject only to competitive leasing (Lee Oil Properties, 85 IBLA 287 (1985)), where land was leased under the MLA when it was only subject to leasing under the Right-of-Way Leasing Act of 1930 (William L. Ahls, 85 IBLA 66 (1985)), and where the lands were located within a wildlife refuge not subject to leasing (Oil Resources, Inc., 14 IBLA 333 (1974)). The important point here, and the fact which distinguishes the instant case from those cases in which we have held that bona fide purchaser protection was not available, is that bona fide purchaser protection is only available

where the issuance of the lease involved a procedural defect; it is not available where no lease could properly issue for the land.

In the present case, even were we to assume that the Forest Service and BLM were correct in their assertions that an inadequate NEPA review had been conducted prior to lease issuance, this would not render the lease void. Rather, inasmuch as a lease might still issue after the completion of the environmental review, premature issuance of a lease renders the lease voidable. As such, the protection afforded by 30 U.S.C. | 184(h)(2) (1982) is available if an assignee can show that he is otherwise qualified under the Act.

Whether or not a party qualifies as a bona fide purchaser within 30 U.S.C. | 184(h)(2) (1982) depends on common law standards. Thus, a bona fide purchaser has been defined as one who acquires his interest in good faith, for valuable consideration, and without notice, actual or constructive, of any violation of the statute or regulations in the issuance of the lease. Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966); See Winkler v. Andrus, 614 F.2d 707 (1980); Oil Resources, Inc., supra. The above standards are controlling in ascertaining whether Exxon qualifies as a bona fide purchaser.

We note initially that there are no allegations of bad faith on the part of the parties to the assignment. Rather, the record before the Board indicates that the assignment was the direct result of Exxon's interest in the unit to which this lease had been joined. Also, the payment of valuable

consideration is not an issue in this case. In a recent decision, the Board stated the rule that bona fide purchaser protection applies only where consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title. Robert L. True, 101 IBLA 320, 324 (1988), and cases cited therein. In their statement of reasons, appellants explain that Exxon committed to purchase lease W-88886 from Williams upon lease issuance under an agreement dated February 25, 1985, and paid Williams a portion of the consideration at that time. On December 3, 1985, 9 days before receipt by BLM of the Forest Service's objections to lease issuance, Williams delivered the assignment of the issued lease to Exxon, also dated December 3, 1985, and Exxon paid the balance of the purchase price due (SOR at 21). As explained below, Exxon had no notice of any purported defect in lease issuance until after the transfer of the lease and payment of the purchase price of the lease.

To determine whether an assignee is a bone fide purchaser, it is necessary to examine the state of his knowledge, both actual and constructive, at the time of the assignment. Jack Zuckerman, 56 IBLA 193, 201 (1981); Winkler v. Andrus, *supra*; O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977). Assignees of Federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment. Winkler v. Andrus, *supra*. An assignee is not, however, required to go outside those BLM records relating to the particular parcel of land assigned. Id. We further note that it is the responsibility of BLM to adjudicate lease

offers, and the bona fide purchaser has a right to presume that BLM has properly discharged this duty. David Burr, supra at 230.

It appears from the information provided by appellants, unrefuted by BLM, that they had no actual knowledge of any defects in the lease at the time of the assignment. As noted above, assignment occurred 9 days before BLM received the Forest Service letter. BLM has provided no information that would indicate the parties to this appeal had requisite actual knowledge of the Forest Service's position made known in its December 4, 1985, letter.

Further, nothing contained in the record at the time of assignment could have served to put appellants on notice that there was a problem with lease issuance. 8/ The Board has held that constructive knowledge will be imputed where the facts are sufficient to cause an ordinarily prudent person to make further inquiry which, if followed with reasonable diligence, would lead to discovery of the defects in lease issuance. David Burr, supra; Winkler v. Andrus, supra at 712; Southwest Petroleum Corp v. Udall, supra at 657. Appellants herein note:

8/ In response to a request by counsel for appellants, the Wyoming State office, in a letter dated Apr. 9, 1986, verified that copies of the correspondence between the Regional Forester and the State Director (dated May 29, June 10, and July 25, 1985) relating to the suspension of oil and gas leasing in the Bridger-Teton National Forest were not placed in the case file until "on or about December 15, 1985." The letter explained: "The subject exhibits were placed in casefile W-88886 * * * because of the comments made by [the Regional Forester] dated December 4, 1985 (received December 12, 1985) * * *."

At the time the assignment was made and the final consideration paid, there was nothing in the case file which would have put Exxon on notice that lease W-88886 may have been improperly issued. It contained the application; the recommendations of the U.S. Forest Service relative to issuance and stipulations; evidence of unit joinder; the clearlisting; and had been reviewed all the way to the State Director's office prior to lease issuance.

(SOR at 21).

With specific reference to the second reason given by the Forest Service and BLM for cancelling the lease, we note that nothing in the record at the time of assignment indicated any lack of compliance with the NEPA requirements. Rather, on record was the October 31, 1984, Forest Service report stating it had "no objection" to lease issuance provided certain stipulations were executed by Williams. The Regional Forester concluded the report by stating: "Our recommendations are based on environmental analysis reports for the Bridger-Teton National Forest. We do not believe an environmental statement is needed at this time." This is the last statement by the Forest Service relating to environmental compliance found in the record up to the December 4, 1985, letter objecting to lease issuance placed in the case file on December 12, 1985.

In the present case, the October 31, 1984, report, which was the only Forest Service statement in reference to the Williams' lease offer on record at the time of lease issuance, effectively averred that sufficient environmental analysis of lease impacts had occurred. Further, stringent stipulations designed specifically to protect the land from environmental impacts and requiring its restoration after the completion of any surface

disturbing activities had been agreed to by Williams. These stipulations were formulated by the Forest Service in conjunction with its review of potential environmental impacts from oil and gas leasing. Thus, there was nothing to indicate to Exxon the purported lack of NEPA compliance upon which BLM relied to cancel the lease. We further agree with appellants

that the documents in the record gave every indication that the lease had been properly issued. In particular, we note that the Wyoming State Director, in a memorandum dated October 8, 1985, expressed the opinion that the lease offer should "no longer be 'held'" but should be processed for clearlisting and lease issuance. ^{9/} See also Memorandum to the State Director from the District Manager dated November 12, 1985. In light of

the fact there was no indication in the record or elsewhere that Exxon was or could have been aware of any impropriety in lease issuance, and the fact Exxon meets the other qualifications of a bona fide purchaser, we hold that the protection provided under 30 U.S.C. § 184(h)(2) (1982) precludes BLM from cancelling lease W-88886 as to Exxon. Cf. Champlin Petroleum Co., 99 IBLA 278 (1987). ^{10/}

^{9/} This memorandum also undercuts BLM's assertion that lease issuance was unauthorized. This memorandum, which is dated after the correspondence between the Regional Forester and the State Director with reference to the suspension of oil and gas lease issuance in the Bridger-Teton National Forest, would certainly give rise to the conclusion that issuance of this lease was not forestalled by the agreement.

^{10/} The record also reflects that prior to the lease assignment to Exxon, Williams had conveyed a 2-percent overriding royalty interest to various individuals. This assignment is dated Dec. 2, 1985, and is noted on the Exxon assignment. There is nothing to show that this assignment was not done in good faith, without consideration, or with any knowledge of the grounds cited by BLM for cancelling the lease. Accordingly, it is proper to extend bona fide purchaser protection to these assignees as well.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision cancelling noncompetitive oil and gas lease W-88886 is reversed.

James L. Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge